

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05CV10165-RGS

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GREAT NORTHERN INSURANCE COMPANY,  
As Subrogee of Jon and Abby Winkelreid  
Plaintiff(s)

VS.

FERGUSON & SHAMAMIAN ARCHITECTS, LLP  
and W.B. MARDEN COMPANY  
Defendant(s) and Third Party Plaintiff(s)

VS.

THIRTY ACRE WOOD, LLC and  
ELLIS AND SCHNEIDER  
Third Party Defendant(s)

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**MOTION OF THIRTY ACRE WOOD, LLC. TO COMPEL ANSWERS TO INTERROGATORIES  
AND RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS FROM THE PLAINTIFF**

The Third Party Defendant, Thirty Acre Wood, LLC, hereby moves, pursuant to F.R. Civ. P. 37(a)(2)(B) for an Order compelling the Plaintiff, Great Northern Insurance Company, to serve Answers to Thirty Acre Wood, LLC's Interrogatories and a Response to Thirty Acre Wood, LLC's Request for Production of Documents. In support of this motion, the Third Party Defendant states as follows:

The Third Party Defendant, Thirty Acre Wood, LLC served Interrogatories and a Request for Production of Documents on the Plaintiff on January 13, 2006. Plaintiff has not served Answers to said Interrogatories, nor has Plaintiff served a Response to Thirty Acre Wood, LLC's Document Request.

Counsel for Thirty Acre Wood, LLC has in good faith attempted to confer with counsel for Great Northern Insurance in an effort to secure Answers to Interrogatories and a Response to the Request for Production of Documents without court action. Plaintiff's counsel has failed more than once to respond within seven (7) days to defense counsel's request for a discovery conference as required by LR 37.1(A). Therefore, defendant asks that this Court sanction plaintiff by automatically allowing this motion.

As further grounds for this motion, the defendant refers to and incorporates its Memorandum in Support of Motion to Compel Answers to Interrogatories and Response to Request for Production on Documents from the Plaintiff, and the Affidavit of Margaret Suuberg attached thereto.

WHEREFORE, the Third Party Defendant, Thirty Acre Wood, LLC, asks that this court enter an Order requiring the Plaintiff to serve Answers to Thirty Acre Wood, LLC's Interrogatories and a Response to Thirty Acre Wood, LLC's Request for Production of Documents within ten (10) days of allowance of this motion.

Thirty Acre Wood, LLC  
By its Attorney,

/s/ Frank S. Puccio, Jr.  
FRANK S. PUCCIO, JR./BBO# 407580  
Burns & Farrey  
446 Main Street, 22<sup>nd</sup> Floor  
Worcester, Massachusetts 01608  
Telephone 508-756-6288

Certificate of Compliance with LR 37.1

I hereby certify that counsel for the Defendant, Thirty Acre Wood, LLC has complied with the requirements of LR 37; LR 7.1(A)(2) and LR 26.2(C) regarding good faith attempts to confer and narrow discovery issues.

/s/ Frank S. Puccio, Jr.  
FRANK S. PUCCIO, JR./BBO# 407580

**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 17, 2006.

/s/ Frank S. Puccio, Jr.  
FRANK S. PUCCIO, JR./BBO# 407580

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Third Party Defendant(s)

**AFFIDAVIT OF MARGARET R. SUUBERG**

Now comes Margaret R. Suuberg and having been duly sworn deposes and says

1. I am an attorney with the Law Firm of Burns & Farrey, representing the Third Party Defendant, Thirty Acre Wood, LLC.
2. I caused Interrogatories and a Request for Production of Documents to be served on the Plaintiff on or about January 13, 2006.
3. I did not receive Answers to said Interrogatories or a Response to said Request for Production of Documents from the Plaintiff.
4. I telephoned Plaintiff's counsel, James Cullen, on April 4, 2006 and left Mr. Cullen a voice mail message inquiring as to the status of Plaintiff's Answers and Response. I did not receive a return call from Mr. Cullen.
5. I left additional voice mail messages for Mr. Cullen on April 7, 2006 and again on April 10, 2006.
6. On April 10, 2006, I spoke to Mr. Cullen, who indicated that he would promptly send out the Answers and Response.
7. Not having received anything from Plaintiff's counsel, I wrote to Mr. Cullen on April 27, 2006 requesting that he call me to confer regarding the outstanding discovery requests. I did not receive a response to that letter.

8. I left Mr. Cullen another voice mail message on May 8, 2006, reiterating that I wished to discuss the discovery issues. I did not receive a response to that telephone call.
9. As of this date, I have not received Answers to Thirty Acre Wood, LLC's Interrogatories or a Response to Thirty Acre Wood, LLC's Request for Production of Documents from the Plaintiff.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 17<sup>TH</sup> DAY OF MAY, 2006

/s/ Margaret R. Suuberg

MRS/nmk  
(0000WW-0588 cp#94)